

AN ANALYSIS OF SERVICE CONTRACTS  
AND  
THEIR ADMINISTRATION

Terrence A. Conner

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# THESIS

AN ANALYSIS OF SERVICE CONTRACTS  
AND THEIR ADMINISTRATION

by

Terrence A. Conner

September, 1978

Thesis Advisor:

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T18-074



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|--|-----------------------|---|
| 1. REPORT NUMBER   | 2. GOVT ACCESSION NO. | 3. RECIPIENT'S CATALOG NUMBER   |
| 4. TITLE (and Subtitle)<br>An Analysis of Service Contracts and<br>Their Administration  |                       | 5. TYPE OF REPORT & PERIOD COVERED<br>Master's Thesis;<br>September, 1978 |
|  |                       | 6. PERFORMING ORG. REPORT NUMBER  |
| 7. AUTHOR(s)<br>Terrence A. Conner   |                       | 8. CONTRACT OR GRANT NUMBER(s)  |
| 9. PERFORMING ORGANIZATION NAME AND ADDRESS<br>Naval Postgraduate School<br>Monterey, California 93940   |                       | 10. PROGRAM ELEMENT, PROJECT, TASK<br>AREA & WORK UNIT NUMBERS            |
| 11. CONTROLLING OFFICE NAME AND ADDRESS<br>Naval Postgraduate School<br>Monterey, California 93940   |                       | 12. REPORT DATE<br>September, 1978  |
|  |                       | 13. NUMBER OF PAGES<br>68   |
| 14. MONITORING AGENCY NAME & ADDRESS (if different from Controlling Office)<br>Naval Postgraduate School<br>Monterey, California 93940   |                       | 15. SECURITY CLASS. (of this report)<br><br>Unclassified                  |
|  |                       | 15a. DECLASSIFICATION/DOWNGRADING<br>SCHEDULE                             |
| 16. DISTRIBUTION STATEMENT (of this Report)<br><br>Approved for public release; distribution unlimited.  |                       |   |
| 17. DISTRIBUTION STATEMENT (of the abstract entered in Block 20, if different from Report)   |                       |   |
| 18. SUPPLEMENTARY NOTES  |                       |   |
| 19. KEY WORDS (Continue on reverse side if necessary and identify by block number)   |                       |   |
| 20. ABSTRACT (Continue on reverse side if necessary and identify by block number)<br><br>The military services are utilizing service contracting to alleviate the problems of personnel ceiling drawdowns and tight budgetary controls. Due to poor definition of the Statement of Work and a general misunderstanding of OMB Circular A-76 and a liberal interpretation of the Service Contract Act by the Department of Labor, service contracting |                       |   |



and the administration of service contracts must be considered poor. Recent attempts by the Navy and Air Force through their COTR and TRCO concepts to alleviate some of the problems in service contract administration have had varied results.

This thesis will examine the problems that presently hinder service contracting and the administration of service contracts. A new approach, job analysis, will be recommended for developing the Statement of Work and the Quality Assurance Surveillance Plan. Job analysis involves systematic analysis of the function to be contracted. First a step-by-step review of the requirement to be contracted is conducted. The goal of this review is to arrive at specific output services with corresponding standards associated with the contracted service.





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An Analysis of Service Contracts and Their Administration

by

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Submitted in partial fulfillment of the  
requirements for the degree of

MASTER OF SCIENCE IN MANAGEMENT

from the

NAVAL POSTGRADUATE SCHOOL  
September, 1978



## ABSTRACT

The military services are utilizing service contracting to alleviate the problems of personnel ceilings drawdowns and tight budgetary controls. Due to poor definition of the State-  
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## I. INTRODUCTION

Upon receipt of a purchase request the procuring contracting officer must determine if a competitive base exists. If there are an adequate number of qualified suppliers who will be actively competing for the contract, the contractors are willing to price competitively, definite specifications can be published for the required items, and there is adequate time for the formalities incident to advertising, reception, and opening of bids, then formal advertising is the preferred method of procurement. If any of the formal advertising criteria cannot be met, procurement must be made by negotiation, provided that the procurement situation is covered by one of seventeen exceptions cited in the Armed Services Procurement Act of 1947. A further restriction on the authority of the contracting officer is included in several of the statutory exceptions to formal advertising that requires a determination by the head of the department prior to negotiation. In 10 United States Code 2304 (g) all negotiated procurements in excess of \$10,000.00 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals, including price, shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured and written or oral discussions shall be conducted with all responsible offerors





who submit proposals within a competitive range, price and other factors considered. The requirements of this subsection are with respect to written or oral discussions and need not be applied to procurements in implementation of authorized set-aside programs or to procurements where it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and reasonable prices. The request for proposal must notify all offerors of the possibility that award may be made without discussions.<sup>1</sup>

Proposals from the qualified sources should be quantitatively evaluated and may be ranked in accordance with their point scores. Narrative comments would be included indicating individual proposal strengths and weaknesses. The overriding consideration is to make the award to the firm that demonstrates to the satisfaction of the Government that it can perform in the best interest of the Government, price and other factors considered. This is the competitive range decision and must involve careful cost/quality analysis based on judgment and on circumstances to each individual procurement. The contracting officer is therefore presented with a

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<sup>1</sup> Paul A. Shnitzer, "Competitive Negotiation, Basic Principles and Guidelines," (The Government Contractor, BRIEFING PAPERS, August 1975), pp. 1-2.



flexible working definition for determining the competitive range, and procurement should result which is fair and equitable to the parties involved.<sup>2</sup>

The Government cannot contract for services for people who receive their assignment from Government personnel, and whose relationship to the Government is no different from that of a Government employee. If the Government desires to procure services in this fashion, it must hire its personnel in accordance with Civil Service Laws. The contract must be for a finished end product and be administered to insure that control and supervision over the work, and discretion as to the techniques which will be used, remain entirely with the contractor.<sup>3</sup>

By Office of Management and Budget Circular A-76 a national policy was established to rely on the private enterprise system for the products and services needed by the Government to the maximum extent consistent with effective accomplishment of essential programs. OMB Circular A-76 exempts basic functions of management which agencies must perform in order to retain essential control over the conduct of their programs and management advisory services normally provided

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<sup>2</sup> Duby, Martin G., "Working Definition of Competitive Range," Government Contracts Service, October 1971, p. F-18.

<sup>3</sup> "Proper Use of Contractor Personnel," SECNAVINST 4200.27A, Department of the Navy, 23 June 1976, p. 1.



by government staff organizations. The problem here is to determine which services fall under A-76 and those that do not. The armed services generally divide these into the following:<sup>4</sup>

1. Expert and consultant services (personal services), i.e., support services performed by personnel who are exceptionally qualified, by education or experience, in a particular field to perform some specialized service.

2. Contractor support services (nonpersonal services), i.e., support services of a white collar, professional nature, involving performance in support of Navy programs, such as scientific/technical studies and analysis, test and evaluation support, budgetary/financial analysis, ADP support, reliability and maintainability support, cost analysis, and general management support.

3. Commercial or Industrial (C/I) Activities Support Services (nonpersonal services), i.e., overhead or program support services not essential to the management control of Navy programs. Essentially, the 'blue collar area, such as janitorial, transportation, or guard services. C/I Activities Program calls for contracting out of entire functions or the total capability by contract. Contractor support services involve contracting out specific efforts in support of a continuing in-house capability.

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<sup>4</sup> LCDR P. S. Cole, "Contracting Out," Procurement Newsletter (Summer 1977), p. 7.



Other service contracts covered by the Service Contract Act of 1965 (P.L. 89-286) include services for such areas as laundry and dry cleaning, general services, food services, custodial and janitorial duties, packing and crating and miscellaneous housekeeping functions in excess of \$2500.00. The Service Contract Act extends Federal minimum wage, fringe benefits, and working condition standards to all contracts and subcontracts thereunder for all these services but adds nothing in determining their competitive range.

Other examples of service contracts would be those calling for repairs to certain machinery where the precise work to be done cannot be predicted in advance, such as a time and material contract. Another would be where the materials are not supplied by the seller, but costs are agreed to, this being a labor hour contract. Also included are level of effort service contracts where the Government desires a certain general scope of work to be performed, the contractor may be able or not able to deliver the requested performance.

Service contracts have been and will continue to be an ever increasing focal point for the courts, General Accounting Office, and Congress. The reasons include the aforementioned OMB Circular A-76, labor unions representing Government employees that feel civil service jobs are being threatened, and the President's transfer of responsibility for several procurement policy functions from OMB to General Services Administration. Most controversies in the service contract arena surround the personal versus non-personal distinction. If the Government tells the contractor how, not what to do,





the contract becomes the illegal personal service and no longer a non-personal service.<sup>5</sup>

A. STATEMENT OF THE PROBLEM

The Department of Defense operates some 800 major and 5000 minor installations and activities around the world. With the continuing drawdown on resources, the various branches of the armed services are faced with serious challenges to support themselves. Increased emphasis and direction from higher echelons is continually being received by the armed services to expand the amount of service contracting now being done.

The most apparent problem with the increased emphasis on contracting out by the armed services is the apparent weakness of ill definition of requirements and consequent inability to measure true performance. This paper will examine present methods of identifying and stating service requirements so that a contract will accurately express the minimum essential requirements and associated measurable characteristics. In addition, present methods will be examined and possible solutions will be offered to contracting personnel to assure that proper contract administration is being performed, and the contractor is providing the contractually required services.

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<sup>5</sup> Joseph J. Duffy, Jr., "Service Contracts - Crossover from Non-personal to Personal, Some Criteria," Procurement Newsletter (Summer 1976), p. 10.



## B. METHODOLOGY

Research material was gathered and discussions held with a myriad of personnel involved in the service contracting sphere. Research for applicable articles and studies pertaining to all aspects of service contracting was conducted. Information was obtained from the Library of the Naval Postgraduate School, the Defense Logistics Studies Information Center, Fort Lee, Virginia, the Library of the Federal Procurement Institute, Washington, D.C., and the Air University at Maxwell Air Force Base.

Telephone discussions with procurement personnel from the Air University, Maxwell Air Force Base, and the Air Force Logistics Management Center, provided considerable input into new approaches to service contracting by the Air Force.

Field trips to the Navy Procurement Office, Oakland, California, the base procurement office, Wright-Patterson Air Force Base, Hunters Point Naval Shipyard, and the Navy Supply Systems Command provided this author a view of not only the procurement personnel's day-to-day problems, but also policy pronouncements by higher authority. The field trips also provided a chance to observe two methods utilized by the armed services to administer service contracts. The Navy's concept, COTR, or Contracting Officer's Technical Representative, and the Air Force's TRCO, or Technical



Representative of the Contracting Officer, were observed in theory or practice, respectively.

This thesis will introduce the reader to the problems that the military services are encountering today in service contracting. Past practices, General Accounting Office decisions, current laws, directives, and procedures that have a bearing on service contracting will be viewed in order to put service contracting into perspective. The problems with service contracting will be identified and then an analysis of suggested methods of developing a service contract will be explored.

This author hypothesized that the armed services do a poor job in the service contracting arena. It was also hypothesized that the various armed services would attack service contracting from totally different perspectives, i.e., the Air Force being very centralized in their management of the service contract problem, the Navy very decentralized, and the Army somewhere in between.

It was anticipated that at least a few recommendations would be possible. The various approaches used in preparing and administering service contracts to improve the process seemed to be the facets of which lend themselves to concrete recommendations.



## II. BACKGROUND

This section will provide the reader with background information into the basic acts, laws, and decisions that have had a decisive factor in determining the competitive range, selecting a source and negotiating with that source for a service type contract.

The Service Contract Act of 1965 effective 19 January 1966 extended Federal minimum wage, fringe benefits and working condition standards, to all contracts and subcontracts thereunder for services, such as laundry and dry cleaning, guard services, food services, custodial and janitorial duties, packing and crating, and miscellaneous housekeeping functions, in excess of \$2500.00. The law specifies that service contracts in excess of \$2500.00 must require that the contractor pay his employees the prevailing wage rate for the locality as determined by the Secretary of Labor, including fringe benefits as an element of wages. Successor contractors are required to pay wage rates and fringe benefits based on those agreed to by the predecessor contractors in collective bargaining agreements when the new service contracts is for substantially the same work and will be performed at the same location. In no case can the wage rate be less than that provided under the Fair Labor Standards Acts. In addition to its wage rate provisions, the law also covers safety standards and sanitary working conditions.<sup>6</sup>

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<sup>6</sup> The Service Contract Act of 1965, Government Contracting Reports, Revision 26, Part II, p. H-4-14.





Because of the broad and somewhat ambiguous definition of a service employee, there have been difficulties in determining whether the Act is applicable to a given situation. Clear examples of the proper application of the Act were previously mentioned. However, a service employee is not one who qualifies as a bona fide executive, administrative or professional employee.

The Walsh-Healey Public Contracts Act applies to United States contracts for the manufacture or furnishing of materials, supplies, articles and equipment, in any amount of over \$10,000. The Service Contract Act applies to all United States contracts, the principal purpose in which is to furnish services through service employees. In a modification, overhaul type contract where supplies and services are being furnished in substantial amounts, it will be necessary for the contractor to comply with the provisions of both laws.<sup>7</sup>

The following represent categories of services contracts:<sup>8</sup>

1. Maintenance, overhaul, repair, servicing, rehabilitation, salvage, and modernization or modification of supplies, systems, and equipment.
2. Maintenance, repair, rehabilitation, and modification of real property.
3. Architect-engineering.
4. Expert and consultant services.
5. The services of DOD-sponsored organizations.

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<sup>7</sup> The Service Contract Act of 1965, op.cit., p. H-4-18.

<sup>8</sup> Armed Services Procurement Regulations, 1976 Edition, Department of Defense, Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., Section XXII.



6. Installation of equipment obtained under separate contract.

7. Operation of Government-owned equipment, facilities and systems.

8. Engineering and technical services.

9. Housekeeping and base services.

10. Transportation and related services.

11. Training and education.

12. Medical services.

13. Photographic, printing, and publication services.

14. Mortuary services.

15. Communications services.

16. Test services.

17. Data processing.

18. Warehousing.

19. Auctioneering.

20. Arbitration.

21. Stevedoring.

22. Research and development.

Government purchases are customarily made through procurement by formal advertising and negotiation. The evaluation and selection procedures in formal advertising are the more orderly, systematic and objective. They consist of a bidder's submission of sealed bids, a public opening and award (without any type of discussion) to the responsible bidder submitting the lowest responsive bid.



Procurement by negotiation, as the alternative, is characterized by a subjective evaluation process. Negotiation affords the Government a considerable amount of flexibility and permits the consideration of factors that would be ignored in formal advertising. Negotiation also requires more knowledge and insight by the contracting officer than is needed in formal advertising. These factors are very evident in the case of a competitive negotiation (as opposed to a sole source negotiated procurement) which is frequently as highly contested as one that is formally advertised.<sup>9</sup>

Before proceeding with the procedures of determining the competitive range for service type contracts the contracting officer must examine the nature of the contractual relationship that may develop. Questions must be raised as to whether a request from a requiring activity will develop into a contract of the legitimate non-personal services variety, or for an illegal personal services. The Armed Services Procurement Regulation requires that before a contracting officer enters into a service contract, a written determination must be made that the services are nonpersonal.<sup>10</sup> A service contract is personal and illegal when the relationship between the Government and the contractor's personnel is that of employer and employee or when the "master-servant" relationship exists. The Government must buy some sort of end item, not necessarily

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<sup>9</sup>Schnitzer, op. cit., p. 1.

<sup>10</sup>"Proper Use of Contractor Personnel," op. cit., p. 2.



hardware in the case of service contracts, but at least a contractually specified and defined piece of research or a report for example. If the Government wishes nothing more than people who possess certain qualifications, then it must hire them in accordance with the Civil Service laws. The furnishing by the Government of office space, equipment or supplies, and the interchangeability of Government and contractor personnel will result in an illegal personal services contract.<sup>11</sup>

When the contracting officer makes the decision to utilize competitive negotiation, the Government initiates a Request for Proposal (RFP) which sets out both the Government's requirements and the criteria for evaluation of offers. This is followed by the submission of timely proposals by a maximum number of possible offerors in the competitive range, and ends with award of a contract to the one whose offer is most advantageous to the Government.<sup>12</sup>

In preparing the RFP the contracting agency must give the Department of Labor thirty days notice, if possible, for any contract exceeding \$10,000.00 subject to the Service Contract Act, specifying the types of service, the place of performance, the number and class of employees and the minimum wage and fringe benefits included in the contract.

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<sup>11</sup> Duffy, op. cit., p. 10.

<sup>12</sup> Schnitzer, op. cit., p. 1.





The Office of Special Wage Standards, Employment Standards Administration of the Department of Labor will then establish minimum monetary wages and specify fringe benefits for various classes of service employees. This information will then be forwarded back to the contracting officer. The contracting officer must include the wages and fringe benefit information received from the Department of Labor in the invitation for bid (IFB) or request for proposal (RFP) for subsequent use by the contractor.<sup>13</sup>

In determining the competitive range (as discussed in the introduction) in service type contracts, the Department of Defense policy is to guard against unrealistically low priced offers, and prohibit the use of auction techniques, and technical transfusion. DOD regulations require identification and discussions of a contractor's proposed deficiencies as well as discussions of cost proposals submitted. Practices implementing the regulations have been criticized as leading to undesirable results in awarding negotiated contracts. The complaints centered on technical transfusion or so-called levelling of contractor technical approaches and auction techniques and buy-in. The procurement decision was too often guided in source selection by the lowest quoted price rather than a determination of which contractors can do the best overall job for the Government at a reasonable price.<sup>14</sup>

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<sup>13</sup>The Service Contract Act of 1965, op.cit., p. H-4-13.

<sup>14</sup>52 Comp. Gen. 870, 15 G.C., 51 Comp. Gen. 621, 14 G.C., ASPR 3-805-1(b).



In an attempt to reduce the impacts of the technical levelling and buy-ins, mentioned above, the Air Force introduced a new approach in 1974 for performance of advanced, engineering, or operational system development other than minor developmental efforts. The process was separated into four discrete chronological steps:

1. Submission and discussion of technical proposals
2. Submission and discussion of cost or price proposals.
3. Thorough evaluation of proposals for all rating factors, including cost and fee, resulting in selection of a contractor for final negotiation of a definitive contract.
4. Negotiation and execution of a definitive contract.

The process was to notify offerors that any proposals that were unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price would be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of contract requirement, and may be grounds for rejection of the proposal.<sup>15</sup> To overcome the problem of technical leveling, contracting officers were to confine their technical discussions with the offerors to deficiencies in the proposal to those:

1. That lead the contracting officer to conclude that the meaning of some aspect of the proposal is not clear.

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<sup>15</sup> Dale R. Babione, "Service Test of the Four Step Source Selection Process," Office of the Assistant Secretary of Defense (4 March 1976), Attachment.



2. That fail to adequately substantiate a proposed technical approach or solution

3. That lead the contracting officer to conclude that further clarification of the intent of the solicitation is required to effect competition on an equal basis.

To mitigate against the possibility of inadvertent leaking of competitor's cost estimates, as well as to remove possibility of successive rounds of negotiation (auction technique), the submission of cost/price proposals would be delayed until after evaluation of technical proposals and discussion of technical deficiencies. The discussions would include:<sup>16</sup>

1. Cost realism of an offeror's proposal

2. Rectification and/or accommodation of inconsistencies or mathematical errors

3. Correlation of elements of cost with their respective technical efforts

4. Discussion necessary to insure a complete understanding of Government requirements and what is being offered, including delivery schedules and other contract terms.

Based on a complete evaluation of all important factors including cost and fee, involving an integrated decision considering the technical approach, capability, management, price/cost and other factors, a contractor would be selected

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<sup>16</sup>J. W. Plummer, "Concept Paper on Alternate Method for Awarding Competitive Negotiated Contracts for Advanced, Engineering and Operational System Development," 24 December 1974, p. 3.



who is expected to do the best overall job for the Government. Final negotiations are then held only with the selected offeror. In the event that material changes occur and are desired by the Government, negotiations will be reopened. Additional proposals or revisions would not be authorized unless approved at a level no lower than the Head of a Procuring Activity.<sup>17</sup>

The contracting officer must be concerned with the increased attention being centered on service type contracts. By memorandum of 24 July 1970, President Ford set forth for the Office of Management and Budget, the objective of increasing the contracting out of the overhead or program functions (Commercial or Industrial Activities Support Services mentioned in the introduction) in accordance with OMB Circular A-76. However, by memorandum of 12 May 1977, President Carter expressed concern with the excessively large volume of personal and non-personal consulting and expert services used by the Federal Government. The problem for the contracting officer is to identify which services fall under the A-76 program and which can be identified as basic management advisory services which are exempt from the A-76 program. Three active forces need to be considered. One, the policy of the Government to obtain services from private industry whenever practicable (OMB Circular A-76); two, labor unions representing Government employees which may take the position that civil service jobs are being unduly threatened; and three, the President's transfer

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<sup>17</sup> Ibid., p. 4.





of responsibility for several important procurement policy functions, including implementation of OMB Circular A-76 from the Office of Management and Budget to the General Services Administration.<sup>18</sup>

Surprisingly, most complaints on service type contracting do not result from the manner in which the contract is written. Government control or direction of contractor personnel is the problem most often cited. The issue is the distinction between surveillance, which is proper, and supervision, which is not. The permissible range of dialogue between the Government and the contractor is defined as whatever liaison and discussion is necessary to carry out the traditional processes of contract administration. In service type contracts, personnel are usually assigned in liaison capacity to keep the Government advised of progress and surveillance, and as a contact for the contractor to relay his questions and problems. Prodding, reminding, policing written terms of the contract is surveillance; however, how to perform the contract is the contractor's responsibility. Government personnel perform supervision when the contractor is told to perform in a certain manner. The contract then transforms into one for personal services.<sup>19</sup> If the Government furnishes the type of things an employer ordinarily provides his own employees, like typing paper, an inference may be drawn that the Government is treating the contractor's employees as its own.

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<sup>18</sup> Cole, "Contracting Out," op. cit., p. 7.

<sup>19</sup> Duffy, op. cit., p. 10.



### III. SCOPE OF THE PROBLEM

Manpower constraints caused by budgetary actions place more importance on service contracting. Service contracting can provide an alternative to the armed services accomplishment. This alternative is accomplished by utilizing private contractors in cases where in-house capabilities do not exist or are too costly.

If millions of dollars are to be saved by contracting out, then the identification of requirements and the reduction of those requirements into meaningful specifications is essential for a successful contractual action. The Armed Services Procurement Regulations' (ASPR) guidance for service contracts can be found in Section XXII: "a service contract is one that calls directly for a contractor's time and effort rather than for a concrete end product." The inability to require a measure of time and effort has greatly contributed to difficulties in work definition and specifications. Vague specifications and poorly defined evaluation criteria have caused contractors to incorrectly perceive requirements, not submit responsive proposals, and perform to the satisfaction of the contracting activity. These factors have increased unsatisfactory contractor performance, disputes, protests, and claims due to misinterpretation of requirements.<sup>20</sup>

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<sup>20</sup> L. R. Hawkins, "A Discriminative Study of the Effectiveness of Service Contracting," Army Logistics Management Center, Florida Institute of Technology, June 1977, p. 6.



The definition of a work or task requirement continues to be an enormous problem. The statement of work is the vital cog in communicating to potential contractors the Government's needs, and measuring that performance through a surveillance plan. When performance is less than desired, the DOD community is subject to severe criticism, poor contract administration, higher costs, and degradation of policies specified in OMB Circular A-76.<sup>21</sup>

The matters that procurement personnel must fully comprehend are the latest laws and regulations with regard to service contracts, and then the key function of actually defining the requirements and carrying the process to completion with proper administration. An indepth discussion of contract services, new applications and ramifications of the Service Contract Act follows in the next section.

#### A. PROBLEMS WITH SERVICE CONTRACTS

The Employment Standards Administration of the Department of Labor as a result of recent inquiries determined that certain contracts of the Naval Material Command did not contain an appropriate Service Contract Act clause (ASPR 7-1903.41(a)) and an applicable wage determination. The Office of General Counsel believes that the omission of the Service Contract Act clause and wage determinations in service contracts is widespread. The Office of General Counsel previously stated

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<sup>21</sup> Ibid., p. 8.



to Navy field offices that if 51 percent of the work under a contract is for supplies then the Walsh-Healey Act applies, unless the contract has two clearly severable phases, one supply and the other services, in which case the Service Contract Act applies to the services portion. The Service Contract Act later was held to apply to a contract for architectural and engineering services contract although only 16 percent of the work was subject to the Service Contract Act. With this liberal interpretation, it is now anticipated that very few service contracts will not be applicable to the Service Contract Act. If the contracting officer is in doubt concerning the applicability of the Service Contract Act, a Standard Form 98 should be forwarded to the Department of Labor for determination.<sup>22</sup>

The Service Contract Act provides against "wage busting" for blue collar workers. In October 1976 amendments to the Service Contract Act brought clerical and other white collar workers within the definition of a "service employee." The law requires that the contractor must pay its employees the wages and fringe benefits prevailing in the area when contracting with the federal government. Congress recently attempted to include professional employees of federal contractors in the Service Contract Act. Before the House Labor Committee

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<sup>22</sup> William G. Rae, "Service Contract Act Application," Department of the Navy, Office of the General Counsel, 21 March 1978, pp. 1-2.





completed debate as to whether professionals are victims of cutthroat competition, OMB's Office of Federal Procurement Policy issued a policy letter to federal agencies. In this policy letter (No. 78-2) federal agencies were given directions for preventing "wage busting" for professional employees of federal contractors. The new policy, effective 1 April 1978, provides that all future solicitations shall include the language contained in the Policy Letter whenever professional employees are expected to be needed to perform the services. The contracting officer can use the information provided by the contractors from the proposed solicitations as to the applicability of the policy letter to professional employees.<sup>23</sup>

Another serious problem of the Service Contract Act involves successor contracts. The Act requires that when the Government awards a successor contract for work previously under contract, the successor contract has to pay the employees at least as much in wages and fringe benefits as contained in the predecessor's collective bargaining contract. The Department of Labor extended the provision to all continuing requirements for services even though the work might be performed in different locations. The Office of Federal Procurement Policy wants the successorship provision applied only in circumstances where substantially the same services are to be performed at the same location as the previous contract. The Office of

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<sup>23</sup> Contract Services: OFPP Issues Policy on Preventing "Wage Busting" for Professionals, Federal Contracts Report, 4-3-78, p. A-9.



Federal Procurement Policy contends the existing labor policy acts to restrain competition for those service contracts where the Government does not specify a place of performance. If the location of performance is immaterial to the procuring agency the actual location of performance may be unknown until a successful bidder is selected. The Department of Labor requires the minimum wage determination be based on the rates applicable to the area where the procurement is located.<sup>24</sup>

The Service Contract Act and OMB Circular A-76 are to a great extent intertwined. OMB Circular A-76 requires a comparative cost analysis prior to issuance of service contracting to determine if functions can be performed at less cost to the Government "in-house" than under a service contract. Executive agencies must make a comparative cost analysis between commercial and Government sources, and the cost to be incurred under each alternative must be determined in accordance with OMB Circular A-76. Industry spokesmen have long complained that cost factors used by the Government for its personnel when making this determination as to whether the function should be performed in-house or under contract are generally grossly unrealistic and understated.<sup>25</sup> A longtime seven percent cost factor retirement cost factor generally had been used in

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<sup>24</sup> "Contract Services: OFPP Current Labor Department Regs, Proposes Revised Policies for Government Agencies Under SCA," Federal Contracts Report, 1-31-77, p. A-15.

<sup>25</sup> "Contract Services: OMB Proposes Sharp Rise in Cost Factors on Retirement, Insurance for Cost Comparison," Federal Contracts Reports, 8-30-76, p. A-23.



making comparisons of in-house versus contracting out for the procurement decision. Recent studies suggested as high as 30 percent for the retirement cost figure, but OMB initiated an interim figure of 14.1 percent, and now proposes to make the figure 20.4 percent of salary to be calculated on a so-called dynamic normal cost basis.<sup>26</sup>

In 1976 the Defense Department developed interim procedures as agreed upon with the Office of Federal Procurement Policy to accommodate more effective implementation of OMB Circular A-76 in Commercial or Industrial Activities. These procedures include DOD procuring activities' use of the "Firm Bid/Offer" concept (also known as Firm Cost). Developed and tested by the Air Force, the "Firm Bid/Offer" provides for securing firm offers from industry to perform commercial and industrial activities by contract. The lowest responsive bid/offer received from a responsible bidder/offeror will be used for comparison with in-house costs to determine the method of operation which will be least costly to the Government. This method should thereby provide for more realism, accuracy and visibility concerning the cost of providing goods or services in-house or under contract with the private sector. Each solicitation must contain an accurate statement of the workload requirement which will also be used in developing inservice costs. A Notice of Cost Comparison will be placed on the face of the

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<sup>26</sup> "Contract Services: OMB Proposes Significant Changes to Application of A-76 Contract-Out Policy," Federal Contracts Report, 11-21-77, pp. AA-1-2.



solicitation document. The costs will be compared by the Government for three-year total for both an in-house operation and the contractor cost of operation. The comparison will be announced publicly to avoid accusations of unfair comparisons resulting from adjustment of Government costs subsequent to making public the contract cost. The contracting officer will either cancel the solicitation or award a contract based upon his comparisons, and all unsuccessful offerors will be notified of the final determination.<sup>27</sup>

OMB Circular A-76 defines the circumstances under which the Government may provide commercial and industrial products and services for its own use. Comparative cost analysis must be used to support decisions involving the decision to contract or accomplish work in-house. This also includes compiling and maintaining an inventory of commercial or industrial activities, conducting triennial reviews of these activities and evaluating "new starts" to determine if the service can be obtained from commercial sources. There are differences, however, in the amount of contracting functions placed under the contract, and what comparisons are made to determine whether work will be done in-house or by the contractor among all the armed services. The Army and Navy desire a decentralized approach to this cost comparison decision while the Air Force is more centrally controlled. The

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<sup>27</sup> "Contract Services: DOD to use "Firm Offer" Concept in Interim Procedures for Implementing A-76 Within Agency," Federal Contracts Report, 11-8-76, p. A-19.





Army and Navy make a cost comparison, the Navy decision being final and the Army's decision being subject to audit by the Army Audit Agency. If there is not an adverse impact on the present work force, the Army's decision will be to contract out. The Air Force's Air Staff selects the functions for review and retains the decision-making authority. The Army and Navy also estimate their own costs of doing in-house work and often then make their own decisions of the contractor's costs. The Air Force, on the other hand, estimates the cost, solicits bids from qualified contractors and gives the work to the lowest bidder, whether in-house or a contractor. The Army and Navy assume that a contractor will do the job like the Service involved, with the same organizational structure and roughly the same number of people. This has the effect of limiting the comparison mostly to employee pay and benefits with the possibility of major determinants being omitted.<sup>28</sup>

In November 1977 Acting OMB Director James T. McIntyre stated that the Government was to take a "middle ground approach" to implement the A-76 policy through a detailed set of controls and procedures and recognize in doing cost comparisons that the Government has vested interests in certain cases. These vested interests concerned present in-house work and the premium price penalty to convert that activity to a contract where federal workers are already at work on

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<sup>28</sup>Defense Manpower: Keystone of National Security, "Report to the President and the Congress," April 1976, Defense Manpower Commission.



the job. Also, if the work is a "new start" with no federal jobs at stake the Federal Government pays a relative price penalty by initiating new work in-house. At this time OMB proposed that each agency establish an A-76 appeal mechanism to provide prompt and objective consideration of appeals from A-76 decisions. The basis for the appellate procedure is that unions contend decisions to contract out are based on false projection of cost savings and the pressure of personnel ceilings reductions. Industry feels that most decisions involving A-76 are based on "empire building and desire to avoid conflict with federal employee unions."<sup>29</sup>

As of 17 April 1978 Les Fettig, Administrator of Federal Procurement Policy, stated that an interagency group is working to develop a cost handbook sufficiently detailed to produce consistent results in all agencies. The handbook will utilize DOD experience, call for firm bids or proposals to establish commercial costs, more fully recognize Government costs both in-house and by contract performance, and utilize independent audits of cost estimates. The handbook is scheduled to be ready in October 1978. Cost comparisons are to be weighted to favor the "status quo." The existing activities will not be converted to contractor operation unless that action produces a savings of at least 10 percent of personnel-related costs.

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<sup>29</sup> "Contract Services: Federal Contracting Out System "Marked By Chaos" In Past, Needs Proposed Revision," Federal Contracts Report, 11-28-77, pp. A-6-11.



A new start of a Government activity will not be approved on the basis of costs unless the savings are at least 10 percent of personnel-related costs plus 25 percent of facility and equipment costs.<sup>30</sup>

Each agency is required to develop a schedule for the review of all its commercial and industrial activities and the contracting out of those similar functions. These figures will be made available to the public. There will also be an objective review of appeals from A-76 determinations as alluded to in November 1977. The one area not intended for cost analysis is research and development.<sup>31</sup>

X B. PROBLEMS WITH THE ADMINISTRATION OF SERVICE CONTRACTS

The policy of the Department of Defense is to make the maximum use of the contract administration offices established by the Military Departments under the Plant Cognizance Program for the performance of the contract administration functions outlined in ASPR 1-406. When field contract administration duties are not required or when special categories of supplies or services are involved, the purchasing office may retain responsibility for contract administration functions. Field contract administration functions are primarily concerned with those post-award/contract administration areas referred to as the communication function, receipt control,

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<sup>30</sup> "Contract Services: OFPP Solicits Congress' Support in Managing A-76 Policy without Undue Restrictions," Federal Contracts Report, 4-17-78, pp. A-1-2.

<sup>31</sup> Ibid.



and inspection at destination. When the degree of post award management attention is considered to be routine, contract administration authorization is usually delegated as is to a designated Defense Contract Administration Services Management Area (DCASMA) or plant representative office. Any special attention the procurement office considers is necessary is usually based on the following factors:<sup>32</sup>

1. Emphasis placed by the requiring or technical activity.
2. Past experience of an unsatisfactory nature in a previous procurement relative to the contractor, commodity or the receiving activity.
3. The degree of contractor experience in commodity/service being procured, particularly when a negative pre-award has been issued.
4. Technical complexity of special contract provisions relative to the item or service.
5. Relationship of the procurement to critical programs or equipment.
6. The extent time elements are critical to insuring completion of the contract.
7. The type of material or service: i.e., operational conditions, when safety precautions are required for hazardous material or conditions.

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<sup>32</sup> Navy Regional Procurement Office, Administration of Purchase Orders and Contracts, Long Beach, California, February 1978.





The goal is to insure that those involved in the performance of a Government contract have a clear and mutual understanding of the scope of the contract, technical requirements, and rights and obligations of the parties involved.

In these times of personnel restraints and dwindling resources, the transfer of Administrative Contracting Officer's functions to DCAS would seem like the answer to the individual services' manpower problems. The principal reasons for using DCAS are as follows:<sup>33</sup>

1. Achieve uniformity in dealing with industry on the administration of Government contracts.
2. Insure that only materials and services of the required quality are accepted.
3. Insure that materials and services are provided on time and at reasonable costs to procuring activities.
4. Perform much additional contract administration tasks as may be requested by procuring activities and program managers.

Personnel from a Navy field procurement office (Oakland, CA), the Naval Supply Systems Command (Washington, DC), and an Air Force procurement office (Wright-Patterson, OH), in discussions with this author, seemed reluctant to delegate administrative functions to DCAS. The reasons cited were as follows:

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<sup>33</sup> The Procurement Team, Its Mission and Needs, Naval Supply Center, Oakland, 24 November 1965, p. 29.



1. A lack of adequate knowledge and understanding of the procurement office's functions and specific programs. This impairs communication from DCAS to the procurement office.

2. Timeliness of information from DCAS is sluggish. Timeliness affects the quality of communications, and a sluggish system cannot be tolerated in today's environment.

3. DCAS does not become personally involved in the procurement office's contracts. This lack of personal involvement causes prodding by the procurement office in order to get satisfactory contracts. The procurement office is concerned with a quality product, and just not modifying delinquent contracts.

4. DCAS personnel are poor. The military management of DCAS frequently consists of military officers on their final tours who provide little leadership, with subsequent poor administration.

In discussions with management officials and administrative contracting officers of DCAS offices (Long Beach, CA, Orlando, FL, and Los Angeles, CA), a certain amount of reluctance to administer service contracts was observed. Although DCAS has the potential to expand its administration capabilities by becoming actively involved in service contracting, it would appear they desire not to do so.

The Navy and Air Force procurement offices who favored in-house contract administration listed their major deficiencies in administering the contracts as follows:

1. Insufficient personnel resources



2. Personnel lack training in service contract procedures

3. Inadequate surveillance procedures and standardization of this surveillance

4. Deficiency in the general understanding of the scope of responsibility

5. Attitude concerning contractual procedures coupled with increasing volume of workload inhibited attention to administrative detail

6. Inadequate documentation for audit trail examination

7. Lack of conceptual safeguards and adequate follow-through controls to insure fair and reasonable charges for work performed under service contracts.

The actual areas of concern by the procurement offices concerning service contracts reflect the following:

1. Material accountability and management

2. Labor classification and charges

3. Delivery order monitoring

4. Travel and per diem

5. BPA abuse

6. On-site job surveillance

7. Progress payments and invoicing

8. Communications among the contracting officer, ordering officer, and contractor.

The Navy has set forth procedures to be utilized when contract administration functions are retained by Navy procuring contracting officers. The appointment of Contracting



Officer's Technical Representatives (COTR) for proper administration of service contracts represents the Navy's panacea for the problems listed in the previous paragraphs. Functions covered by the COTR concept include the following:

1. Issuance and administration of delivery orders under indefinite delivery type (e.g. time and materials or labor hour) contracts.
2. Issuance and administration of work assignments or task orders under cost reimbursement type contracts.
3. Monitoring and progressing of contractors performance as authorized under contracts, delivery orders or task orders.
4. Inspection and acceptance or rejection of work performed by the contractor.
5. Processing contractor invoices for payment by the assigned paying office.

The COTR concept involves the procuring contracting officer appointing ordering officers who must be qualified to issue and administer delivery orders. When a delivery order requires technical administration by other than the procuring contracting officer or ordering officer, a COTR will be appointed. Ordering officers are responsible for assuring that copies of orders, modifications, backup information, and related official correspondence are forwarded to the procuring contracting officer for inclusion in the contract file. COTRs are responsible for furnishing the





procuring contracting officer copies of the task order, task order modifications, and the information required by any letter of instruction the procuring contracting officer issues to the COTR. As of the date of this thesis, the COTR concept had not been implemented in any Navy procurement office.

In January 1976 the Air Force set forth procedures to be utilized when contract administration functions are retained by Air Force procuring contracting officers. The appointment of Technical Representatives of the Contracting Officer (TRCO) represented the Air Force panacea for the problems previously listed in administration of service contracts in 1976. The objectives of the TRCO concept are to provide a systematic and equitable review of the contractor's total performance throughout the contract period. Responsibilities of the TRCO include the following:

1. Assist the procuring contracting officer and contract administrator with the technical aspects of administering the contract.
2. Develop with the assistance of the contracting officer and contract administrator, evaluation guides necessary for proper surveillance of the contract.
3. Monitor the contractor's performance and promptly notify the contracting officer, through the functional area chief, of unacceptable performance.
4. Submit contractor performance reports to the purchasing officer in the frequency, format, and detail prescribed by the contracting officer. Coordinate these



reports with the contractor's authorized representative when directed by the contracting officer.

5. Periodically review contractor performance with the functional area chief and the contracting officer.

6. Accept the services performed by the contractor, as specified by the contract. Prepare necessary certificates or approvals certifying acceptable contractor performance.

7. Assist the functional area chief with preparation of the statement of work, quality provisions, specifications, and performance requirements in the purchase request and solicitation for reprourement of services.

Procurement personnel from the Wright-Patterson base procurement office stated that the TRCO concept had had mixed results. These procurement personnel from the Wright-Patterson base procurement office and Air Force officers from Maxwell Air Force Base suggested a new approach to administering service contracts was needed.



#### IV. ANALYSIS OF SERVICE CONTRACT PROBLEMS

If the Statement of Work is the vital cog in communicating to potential contractors the Government's needs and in measuring the contractor's performance, a new approach to designing the Statement of Work must be developed.

##### A. DEVELOPMENT OF A STATEMENT OF WORK

The Work Scope, Statement of Work, Technical Requirement, or Specification are all terms used to state Government requirements. Generally the Statement of Work is divided into four major component groups: the essential requirements; the method of adequately expressing the quality assurance and test requirements; the technical data; and the management data to be delivered under the contract. Industry has alleged that work statements have become so complex that the contractor cannot fully comprehend all the requirements the Government desires. However, if the Statement of Work is not sufficiently definitive, some contractors may not submit offers because of uncertainty of the tasks involved, or conversely, feel inhibited by the purchaser because the work statement is too restrictive.<sup>34</sup> The detailed requirements set forth for the services must place all potential contractors on a competitive

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<sup>34</sup> W. H. Puryear, "DOD Specifications Development," Office of the Assistant Secretary of Defense (I&L), December 1975.



basis. Its completeness and presentation provide procurement personnel with a control and represents its potential worth.<sup>35</sup>

Failure to adequately describe the scope of the work will result in needless delays and extra administrative effort during the source selection process. Lack of clarity and definition in the Statement of Work may cause valuable time to be lost in obtaining additional information. Additionally, contractors could be disqualified from the selection process due to inadequate technical competence. Costly contingency allowances or low quality and inventive proposals may also be the unintentional results.<sup>36</sup>

The development of the Statement of Work must be a team effort with personnel from the functional area, the procurement office, and manpower and/or management engineering. The functional area chief, the team leader, must exercise authority and responsibility for the service that will be under contract. Functional people state the service to be delivered, measure the quality of the service, and accept the service. Assisting them is the procurement office which prepares the contract, enforces its provisions, and provides necessary authority and technical experience in contracting to make the contract a workable document. The manpower and/or management engineering perform cost studies. The following is a breakdown of responsibilities:<sup>37</sup>

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<sup>35</sup> L. R. Haskins, op. cit., pp. 18-22.

<sup>36</sup> W. H. Puryear, op. cit.

<sup>37</sup> Boyett, LCOL Joseph E. and Major K. Gerken, "Structured Analysis and Quality Assurance for Service Contracts," Air Force Logistics Management Center, 1978, pp. 1-14.





| ACTIONS TO BE PERFORMED                | FUNCTIONAL<br>AREA CHIEF | MANPOWER/<br>MANAGE-<br>MENT<br>ENGINEER | PROCURE-<br>MENT |
|--|--------------------------|--|------------------|
| <u>Define the Requirement</u>          |                          |  |                  |
| Prepare SOW                            | Responsible              | Assist                                   | Assist           |
| Prepare Surveillance Plan              | Responsible              | Assist                                   | Assist           |
| Perform Cost Study                     | Assist                   | Responsible                              | Assist           |
| <u>Source of the Service</u>           |                          |  |                  |
| Develop Sources                        | Assist                   |  | Respon-<br>sible |
| Prepare Solicitation                   | Assist                   |  | Respon-<br>sible |
| Conduct Prebid Conference              | Assist                   |  | Respon-<br>sible |
| <u>Contract</u>                        |                          |  |                  |
| Analyze Bids                           | Assist                   | Assist                                   | Respon-<br>sible |
| Conduct Preaward Survey                | Assist                   |  | Respon-<br>sible |
| Award Contract                         | Assist                   |  | Respon-<br>sible |
| <u>Production/Quality Surveillance</u> |                          |  |                  |
| Surveillance of SOW                    | Responsible              |  | Assist           |
| Request Modifications                  | Responsible              | Assist                                   | Assist           |
| <u>Administer the Contract</u>         |                          |  |                  |
| Make Modifications                     | Assist                   |  | Respon-<br>sible |
| Non-SOW Surveillance                   | Assist                   |  | Respon-<br>sible |
| Conduct Progress Meetings              | Assist                   |  | Respon-<br>sible |



| ACTIONS TO BE PERFORMED | FUNCTIONAL<br>AREA CHIEF | MANPOWER/<br>MANAGE-<br>MENT<br>ENGINEER | PROCURE-<br>MENT |
|-------------------------|--------------------------|--|------------------|
| <hr/>                   |                          |  |                  |
| Inspection/Acceptance   |                          |  |                  |
| Inspection              | Responsible              |  | Assist           |
| Acceptance              | Responsible              |  | Assist           |
| <hr/>                   |                          |  |                  |

The traditional method for defining requirements is to write a process-oriented Statement of Work. In essence, the Government translated existing methods or processes into a Statement of Work and the contractors were asked to provide a service based on this statement. The problem for the Government is to define and measure the quality of the contractor's effort. Another approach, suggested by the Air Force, is to design the Statement of Work on a systematic analysis of the function to be performed. This procedure, called job analysis, involves a step-by-step review of the requirements to arrive at a specific output or services with associated standards of performance. The contractor would integrate a system of people, facilities, material, and the Government Statement of Work, and then input these into a work process with the results being contract performance.<sup>38</sup>

#### B. JOB ANALYSIS

Job analysis includes a thorough analysis of each job's inputs, process, and output functions. The steps in job analysis are organization, tree diagram, activity analysis,

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<sup>38</sup>Boyett, op. cit., introduction.



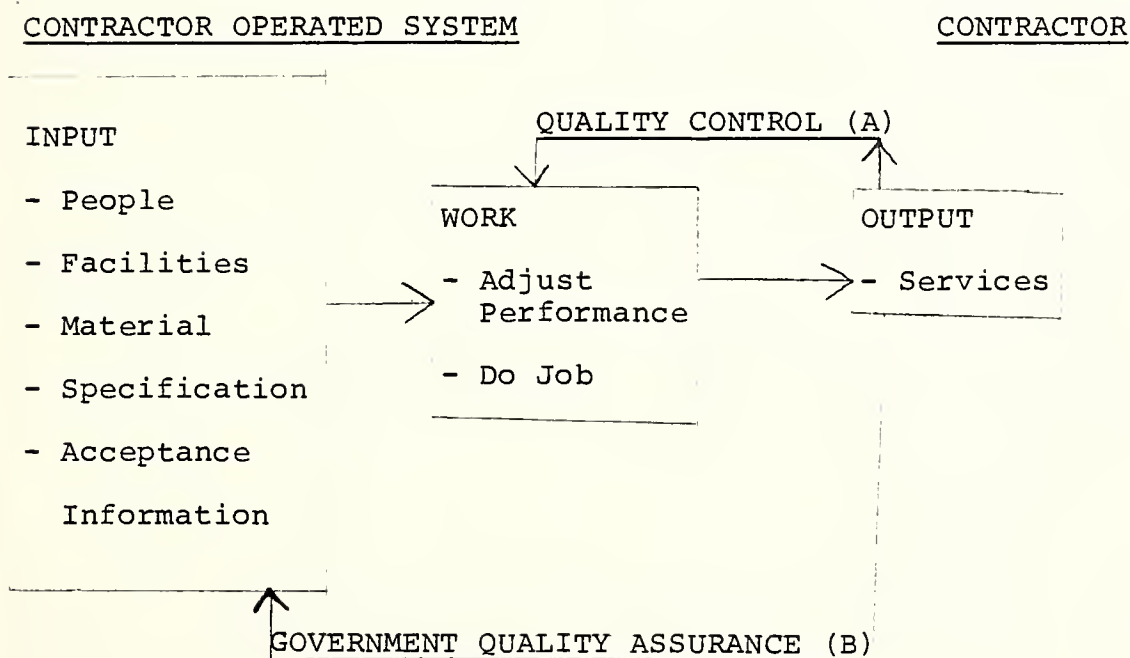
data gathering, performance values, governing directives, and deduct analysis (discussed in next section). In the job analysis phase the services or outputs will become the basis for writing a Statement of Work, developing standards, defining performance indicators, and identifying acceptable quality levels of performance. The service or services required are linked together in a tree diagram breaking the services into parts or subparts. Work analysis needs to be performed to take each part of the tree diagram and break it into input, work, and output. After the services that will be provided under the contract are identified, then the workload and resource data are gathered. This data provides the frequency by which the output services are provided during the proposed contract period. This workload data can be given to the bidders to increase their understanding of the true requirements and for later construction of a surveillance plan. The required resource data will include the physical assets and personnel needed to perform the contract. Finally, performance values must be determined so that each service provided by the contractor has an acceptable quality level. Performance values can be obtained from historical records, managerial desires, or imposed quality levels. Associated with each output will be a performance indicator in order that the output can be measured. If indicators are not prescribed, the analyst must decide along with the customer or management what indicators would aid in measuring the process. Rates in terms of time, distance, and cost are quite helpful. In any case try to



have the performance indicator quantifiable. Standards to which the performance indicators are measured must be familiar, i.e., published requirements, manuals, technical orders, or regulations.<sup>39</sup>

Any regulatory guidance pertaining to the service must be investigated. Most guidance is usually rather general at upper echelons, and becomes detailed as it descends the chains of command. A manager usually has numerous options as to the direction he proceeds. The underlying principle is to be able to understand the guidance.

The following illustrates the job analysis process.<sup>40</sup>



<sup>39</sup> Ibid., Chapter III.

<sup>40</sup> Boyett, Introduction.

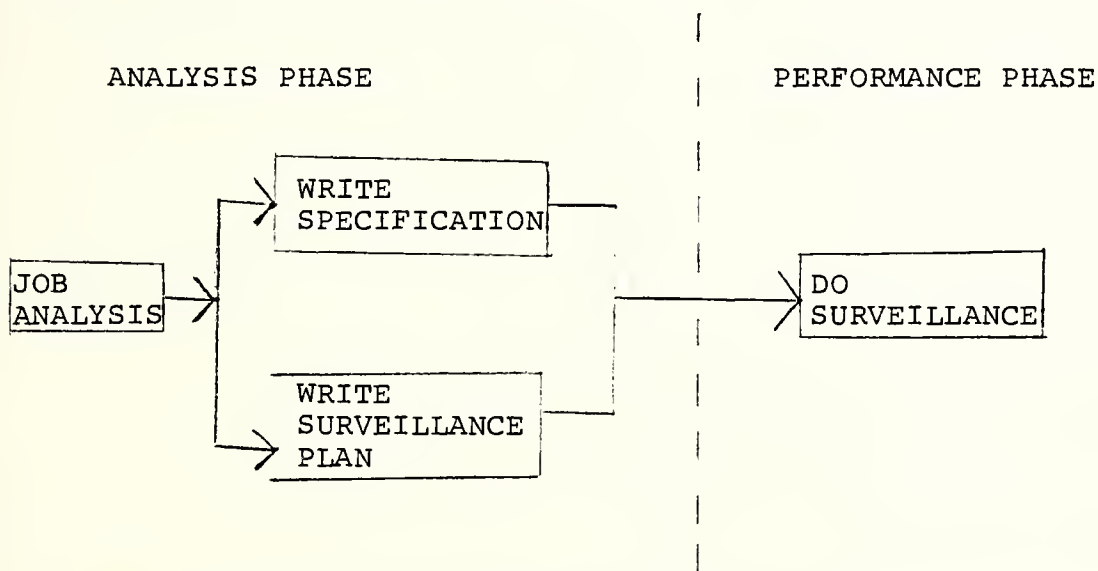




The quality control loops (A) feed back information from the output into the work process. The specified standards require the contractor to adjust performance if needed. The Government quality assurance loop (B) determines the acceptability.<sup>41</sup>

#### C. WRITING THE STATEMENT OF WORK

Upon conclusion of the job analysis, the Statement of Work is written stating the requirements, and the quality assurance surveillance plan which complements the Statement of Work. An overview of contract analysis steps are as follows (surveillance to be described later):<sup>42</sup>



When writing the requirements part of the Statement of Work, it becomes necessary to identify the subject matter of the procurement in great detail. The Statement of Work must include description, materials, dimensions, number of items

<sup>41</sup>Ibid., pp. 1-8.

<sup>42</sup>Ibid., pp. 1-14.



services, overall workmanship of items serviced, and provisions for repair and maintenance over certain contractual periods of time. A proper balance between cost and value of quality must be specified. A large share of the requirements portion of the Statement of Work depends upon engineering and technical experience. Since the Government is responsible for writing the contract, the words written into the Statement of Work must be able to be interpreted by their exact meanings. If it is necessary to use words in an abstract way, examples, illustrations, or definitions should be included to further amplify what is desired. "Shall," "will," "any," "either," "and/or," and misusing pronouns is to be avoided. Terminology must be consistent with abbreviations and acronyms held to a minimum or fully explained. A successfully written Statement of Work reads well, is logical, and can effectively communicate its intentions to the reader. Ambiguous terms include the following:<sup>43</sup>

1. good workmanship
2. or equal
3. in accordance with the best commercial practice
4. good materials
5. as determined by the contracting officer
6. skillfully fitted
7. high quality
8. practically free
9. reasonable
10. free from impurities.

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<sup>43</sup> L. R. Haskins, op. cit., pp. 18-22.



#### D. QUALITY ASSURANCE SURVEILLANCE PLAN

A surveillance plan for service contracts is an organized, planned approach to quality assurance as opposed to a simple checklist method of surveillance. The surveillance plan's goal is to determine if the service provided by the contractor meets the quality standard. The four principal sources of information for surveillance include management information systems, random sampling, checklists, and formal customer complaints. The basis for a surveillance plan comes from three basic ideas: management by exception; performance indicators; and problem location. Management by exception is the concern shown when services are not adequately performed. The inspector only takes action on problems. The Statement of Work contained performance indicators; the level of contractor provided services can be monitored by use of these performance indicators. Problem location refers to decision tables used by the Quality Assurance Evaluator (QAE) to find the problem's source and show that the service is not being adequately performed.<sup>44</sup>

A management information system will assist in surveillance, if available, by collecting information on performance indicators instead of random sampling data. Information can be compared to a standard, judgment of performance made and then acceptance or rejection of the performance. Random sampling is the most common method used by the QAE to determine if

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<sup>44</sup> Boyett, LCOL Joseph E., op. cit., Chapter IV.



performance is acceptable. MIL-STD-105D, "Sampling Procedures and Tables for Inspection by Attributes," is the basis for performing the random sampling. Since no surveillance list will check all aspects of a contractor's performance, formal customer complaints should be utilized to decide whether to step up the level of inspection. The manner of documenting complaints should be carefully planned by those people involved in checking the service contract.<sup>45</sup>

A new procedure for handling formal customer complaints needs to be established, and every organizational element should be briefed and given a copy of an operating customer complaint instruction. The instruction and briefing should include what action can be expected from those assigned to monitoring the service contract. The person monitoring contract performance in the functional office should maintain a file on complaints. The record should contain at least the following information:<sup>46</sup>

1. Date/time of complaint
2. Source of complaint-organization and individual
3. Nature of complaint (narrative description)
4. Contract reference of complaint related services
5. Valid complaint (yes/no)
6. Date contractor informed of complaint
7. Action taken by contractor
8. Signature of the person receiving and validating the complaint.

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45 Ibid.

46 Ibid.





The job analysis phase in writing the Statement of Work identified many performance indicators, however not all will be critical to the services being provided. The analyst must decide which performance indicators are critical and include them in the surveillance plan. Criteria to be used must include the criticality of the process and associated output service and adaptability of the performance indicators to overlap and check a variety of outputs. Part of the surveillance plan recaps the information in the form of a surveillance guide. The guide identifies the performance indicators, critical quality levels, monitoring methods, frequencies of monitoring method, and any appropriate decision tables that may be used. The only thing remaining to do is the actual surveillance. This consists of taking the surveillance plan as written and using it. The random samples are made, schedules of quality assurance inspections made, contractor discrepancies documented and corrective action taken.<sup>47</sup>

If any performance is determined to be unsatisfactory, the contractor will be given a contract discrepancy report. This contract report together with a tally or surveillance checklist becomes the basis for payment or nonpayment or any other actions the contracting officer deems necessary. Since only the contracting officer can take formal action for unsatisfactory contractor performance certain normal steps should be taken if the contractor's performance is found to

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<sup>47</sup> Ibid.



be deficient by the QAE. The following are actions that can usually be followed if the contractor's performance is less than satisfactory:<sup>48</sup>

1. Usually the QAE will tell the contractor's site manager of discrepancies the first time they occur. A notation will be made on the tally or surveillance checklist with the date and time the deficiency was discovered and the date, time, and name of the contractor's manager notification.

2. If the number of discrepancies found exceeds that level for satisfactory performance, the QAE used the decision tables in the Surveillance Plan to determine the cause or causes. If the Government created any of the discrepancies, these will not be counted against the contractor's performance. When the Government has caused the contractor to perform in an unsatisfactory manner, a letter must be written to the responsible Government organization requesting corrective action be taken.

3. When the contractor exceeds the limits of unsatisfactory performance, a contract discrepancy report (CDR) will be issued to the contractor. The seriousness of the failures should govern whether to issue the contract discrepancy report at the end of the month, or as soon as unsatisfactory performance is indicated.

4. When a contract discrepancy report is issued for a performance indicator, the contracting office must deduct from the month's payment the amount indicated in the Performance Requirement Summary Exhibit of the contract. If the

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<sup>48</sup> Ibid., Chapter V.



contractor takes appropriate corrective action to re-perform those services which can be redone, by the end of the next month or by a suspense date agreed to by the contracting officer, the deducted funds will be paid to the contractor. No payment will be made for services that cannot be re-performed.

5. If the contractor does not achieve satisfactory performance by the end of the next month or agreed suspense date, another contract discrepancy report will be issued and the appropriate amount deducted from the contractor's payment.

6. A third contract discrepancy report should be the cause for consideration of a cure notice and possible termination of the contract. The contractor is given this notice of his failure and an opportunity to cure the discrepancy within ten days or such longer period as the contracting officer may authorize.

7. Depending on the overall performance of the contractor, an unsatisfactory reply to a cure notice should require a Show Cause notice to be issued. The Show Cause notice in effect directs the contractor to show why he should not be terminated for default. The Show Cause notice insures that the contractor understands his predicament and his answer can be used in evaluating whether circumstances justify default action.



#### E. CURRENT ADMINISTRATION OF SERVICE CONTRACTS

The current Navy's policy to the administration of service contracts lies in NAVSUPINST 4330.6 of 29 December 1977. This instruction "sets forth procedures to be utilized in issuing orders under contracts, for appointment of Ordering Officers, for appointment of Contracting Officer's Technical Representatives (COTRs), and for proper administration of service contracts." The Navy recognizes that there is a wide variance in contract administration practices among their field activities and believes that this instruction will cure the myriad of problems that now exist. Unfortunately since the inception of the COTR concept (see Chapter III) in December 1977, none of the Navy's field procurement offices have implemented the new policy. The practical and successful application of this concept appears dubious due to the reluctance of procurement and technical personnel to properly implement the concept, and the general confusion and lack of cooperation between Navy systems commands.

The Air Force has had a similar approach to the Navy's COTR concept. The Technical Representative of the Contracting Office (TRCO) is implemented in the Air Force with varying degrees of success. The general consensus received by this author from procurement personnel at Wright-Patterson Air Force Base and Maxwell Air Force Base was that the TRCO concept (see Chapter III) had gone as far as practicable in





insuring proper contract administration for service contracts. In looking for other possible approaches to the problem of administration of service contracting the Air Force was conducting research at their Air University and the Air Force Logistics Command to attempt to overcome their past and present problems. Considerable data was supplied to this author by the Air University at Maxwell Air Force Base regarding their base level service contracts, for full food service, and audio-visual contracts. The cogent factors of their new approaches involve sampling per MIL-STD-105D, identifying key performance indicators, and observing outputs vice input processes. The observations drawn from their research is that they need fewer personnel in the way of a TRCO or QAE to perform surveillance (based upon a test contract currently in use), and that they (Air Force) must back-off and think like a contractor. It is not possible to have the contractor perform in a manner expected by regulations, but according to the contractor's methods and practices. The Statement of Work in the contract is the job description for the in-service work. The procurement office and the contractor must succeed in avoiding any regulations that may be stumbling blocks to properly completing the contract.

The new ideas fostered by the Air Force concerned military management. To properly and successfully avoid possible pitfalls made susceptible by regulations, a change in military management policy is necessary. Military managers will be required to think much more like a civilian director and rely



strictly on successful service contract output. Some military regulations may soon be required to be disestablished as contractor's continue to assume more base and post services.



## V. CONCLUSIONS

Based upon the research conducted and discussions with the three major services, it is the author's opinion that the Air Force becomes involved in detail procedures, the Navy gives broad guidance in most areas and allows the buying organization to develop their own procedures, with the Army somewhere between these approaches. There appears to be little attempt to communicate with those responsible for similar functions in other services. The same mistakes tend to be made year after year despite all the guidance, procedures, papers, studies, and seminars that have been conducted. Getting innovative techniques into the procurement process generates resistance, legal review, and more study.

Audit reports of the Naval Audit Service concerning service contracting suggest a misunderstanding exists as to the regulations that currently apply to service contracting, or that procurement personnel knowingly circumvent them. Most audit reports and controversies over service contracting surround the employer-employee relationship. Research articles suggested that this is not the fault of the written contract, but of poor administration. This author's conclusion is that it is the written contract with subsequent poor administration that leads to the current controversies surrounding service contracts. A properly written contract should entail a quality assurance surveillance plan and administration procedures to



be followed. Air Force procurement personnel stated that the TRCO concept was only partially effective and was not a panacea for administration of service contracts. There is no reason to assume the Navy's COTR concept will be anymore successful once implemented. Good administration of service contracts involves a detailed surveillance plan in the contract, open lines of communications between all parties to a contract, and a change from traditional military management policy. Today's administration of service contracts requires a departure from military rules and regulations, and requires the Government to become more output-oriented.

If considerable time is spent developing the Statement of Work or by utilizing successful contracts from other organizations, many, if not most, of the problems with service contracting should disappear. Effort is not being expended on the development of the Statement of Work, and consequently a quality assurance surveillance plan and proper administration is poor or non-existent.

Service contracting has caused an accelerated growth in workload in procurement offices. The effectiveness in total job completion is seriously impacted by this workload increase. Consequently, service contracting is now beginning to receive a more equal share of emphasis from higher echelons of command as do the system and supply types of contracts.

Management flexibility is critical to successful transition from in-house to contracting out. The foreseeable rapid expansion in service contracting is incompatible with the





pressure from ceiling, grade, and hiring restrictions. Government management must therefore remain flexible in regards to personnel assignments and personnel availability if management objectives are to be satisfied.

The Service Contract Act and OMB Circular A-76 can readily be seen to be intertwined and progressively confusing. The confusion over applicability of the Service Contract Act and forthcoming interpretations must be followed closely by procurement personnel in order to avoid mistakes of their own and subsequent confusion to industry. The Department of Labor has informally suggested to the Navy Supply Systems Command that a contract including one service employee would be subject to the Service Contract Act. Unfortunately, as of this date, nothing has been forthcoming on this matter and everyone is left to "muddle" through. Applying the Service Contract Act with this very liberal interpretation by the Department of Labor will result in a substantial increase in costs. The wage determination by the Department of Labor will drive up drafting and technical typing labor costs, and indirectly all other labor costs. Also anticipated are procurement delays due to the process of obtaining wage determination from the Department of Labor, as well as complaints from contractors not previously subject to the Service Contract Act.

Today's administration of service contracts could justifiably be considered poor. However, the military services are attempting to foster fresh, innovative, and legal approaches to administering service contracts. As more approaches are



tested, researched, and funded, the administration of service contracts should begin to more than just a source of complaint, frustration and confusion.



## VI. RECOMMENDATIONS

The following recommendations are offered as improvements for the procurement of services as it relates to OMB Circular A-76, the Service Contract Act, and administration of service contracts as it exists today at the field activity level.

### A. CENTRALIZED MANAGEMENT AND STANDARDIZATION

A centralized management program should be developed to determine procedures, determine the best type of contracts to use, solve organizational staffing problems, and coordinate actions among field activities and other military services, as appropriate. More standardization could be achieved through the guidance of centralized management. Since there are many variations on the Statement of Work issued by field activities, centralized management could insure that successful contracts be available for distribution to other activities.

### B. COORDINATION BETWEEN SERVICES

It is necessary in these days of dwindling personnel resources that all military services cooperate, pool their research, and share any information available concerning service contracting both successful and unsuccessful. In consonance with A. above, centralized management by a systems command should have the responsibility of handling any coordination between services.



#### C. FUNDED RESEARCH

Closely aligned with the previous recommendation, joint research, joint conferences, and joint symposiums should be held by the military services. Joint research on similar service contracting problems should prevent "reinventing the wheel."

#### D. TRAINING

Most of the training available for procurement personnel regarding service contracting comes as a broad brush. Many of the audits by the Naval Audit Service suggest that field procurement personnel do not understand the proper procedures and methods for administration of service contracts. It is therefore suggested that field activities consider devoting some part of the work day (possibly 30-60 minutes) to training on those matters currently considered woefully deficient. Supervisory and managerial personnel should be queried to determine whether current programs, if any, in the procurement office are adequate and useful. The management personnel of procurement offices should emphasize self-study programs and/or the establishment of their own training course.

#### E. AN APPROACH

Systematically developing the Statement of Work and quality assurance surveillance plan is the means to successful service contracting. There are many similar services that are





currently being contracted at military installations. Systems commands should designate test contracts be developed as models for service-wide application. Teams, with corresponding responsibilities, can be established as explained in Chapter IV of this thesis. Developing a Statement of Work on a systematic analysis of the function to be contracted by the procedure known as job analysis is the responsibility of designated teams at various installations. A step-by-step review of the requirement to arrive at specific output services with corresponding standards can be developed by any field activity. Field activities across the country should be selected to develop model contracts for particular services. These model contracts can then be tested.

Results from the various model contracts tested and found successful should be reviewed by a centralized management group. Once approval by centralized management has been completed, documentation begins. A data bank should then be developed for successful service contracts. In the manner of linear programming, critical variables should be identified for each service contract in the data bank. Other field activities (besides the successful test facility) would have the option of manipulating certain variables to fit local conditions or situations without affecting the success of a contract.

This approach to successful contracting by developing test service contracts and making those successful contracts available to field activities should provide contracting



officers with a valuable tool. The ability to simply extract successful contracts issued by any Department of Defense agency and manipulate that contract to fit local conditions should alleviate the present criticism surrounding service contracts. In addition valuable hours should be saved by avoiding the laborious effort of developing the Statement of Work and the Quality Assurance Surveillance Plan.

F. CONSIDERATION OF DCAS UTILIZATION

The military services need to consider greater participation by DCAS in administering service contracts. With the proper development of a Statement of Work and a quality assurance surveillance plan, DCAS has the potential to substantially augment the military services' dwindling supply of personnel resources.



## VII. SUMMARY

The total procurement dollars expended on service contracts should continue to increase steadily. The development of contractor-run services (particularly on bases and posts) will necessitate different philosophies by the military on policies previously handled in accordance with military regulations. Systematically developing the Statement of Work and quality assurance surveillance plan is the means to successful service contracting. Correspondingly, military management must begin to be concerned with the outputs, and shy away from the contractor's inputs into the service.

The problems currently besetting the military services in service contracting are not insurmountable. By coordinating the efforts of the military services, centrally managing the process, and utilizing the best solutions available, the successful accomplishment of the mission can proceed.



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